

DRAFT TO FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 87211(d) and Handbook

Specific Purpose:

This regulation and handbook reference are adopted for clarity and consistency and to align with the financial distress reporting and notification requirements specified in Health and Safety Code (HSC) section 1569.686(a); allow the California Department of Social Services (CDSS) to levy civil penalties as specified in HSC section 1569.686(c); or take other appropriate action for failure to report specified events per HSC section 1569.686(b). The HSC section 1569.686 was added to statute as a result of Senate Bill (SB) 897 (Chapter 376, Statutes of 2011).

Factual Basis:

It is necessary to adopt this regulation and handbook reference in order to implement SB 897 (Chapter 376, Statutes of 2011) and necessary for consistency with HSC section 1569.686(a). The statute requires that a licensee notify specified parties in writing if the licensee experiences any of the specified financial distress events. The statute specifies the parties to be notified; the timeframe in which to notify; and the financial distress events to be reported. In addition, HSC section 1569.686(c) specifies that CDSS may levy a civil penalty for failure by the licensee to report financial distress events or take other appropriate action as per HSC section 1569.686(b).

Final Modification:

Following the public hearing, CDSS is making changes to the regulation for clarity and consistency purposes.

The CDSS is amending the regulation language in Section 87211(d) to strike superfluous language referencing HSC section 1569.686(a). For clarity and ease of reading, CDSS is striking language pertaining to the civil penalty, moving the substance of this regulatory language to Section 87211(f) and adding the words "of the failure to provide the required notification" to more clearly represent statutory requirements. For clarity and consistency, CDSS is renumbering Section 87211(d)(1) to 87211(e).

For clarity, CDSS is adding Sections 87211(d)(1)-(5), which adds statutory language specifying the five events indicating financial distress listed in HSC section 1569.686(a). For ease of the user, the content of the statute has been incorporated into

Sections 87211(d)(1)-(5). Additionally, to eliminate redundancy, CDSS is repealing the Handbook reference to HSC section 1569.686(a).

Section 87211(d)(1)

Specific Purpose:

This regulation is adopted for clarity and consistency and to align with the financial distress notification requirements to potential residents specified in HSC section 1569.686(a).

Factual Basis:

It is necessary to adopt this regulation in order to implement SB 897 (Chapter 376, Statutes of 2011) and necessary for consistency with HSC section 1569.686(a). The statute specifies that licensees are to disclose in writing to any potential residents prior to admission any of the specified financial distress events. This regulation seeks to provide further clarification that notification to the potential resident or their representative shall be no later than prior to the resident or their representative signing the admission agreement.

Final Modification:

Following the public hearing, CDSS is making a change to the factual basis in the Statement of Reasons for clarity purposes. Additionally, for clarity and consistency purposes, CDSS is making a change to this regulation.

The Factual Basis of the Statement of Reasons is being amended to clarify that HSC section 1569.686(a) does not specify how licensees are to notify any potential residents prior to admission of any of the specified events that indicate financial distress. This regulation seeks to prescribe a process that notification to the potential resident or their representative shall be in writing and no later than prior to the resident or their representative signing the admission agreement. It is necessary to adopt this regulation in order to clarify SB 897 (Chapter 376, Statutes of 2011), which added HSC section 1569.686(a).

This regulation has been renumbered from Section 87211(d)(1) to 87211(e) to accommodate the addition of Sections 87211(d)(1)-(5). The CDSS is amending the regulation language in Section 87211(e) to strike superfluous language referencing HSC section 1569.686(a) and adding the words "Section 87211 (d)" to clarify the accurate regulatory cross reference.

Section 87211(e)

Specific Purpose:

This regulation is adopted for clarity and consistency with HSC section 1569.686(b). Upon notification by licensee of specified financial distress event(s), CDSS shall take appropriate action in response to the event(s) reported.

Factual Basis:

It is necessary to adopt this regulation in order to implement the provisions of SB 897 (Chapter 376, Statutes of 2011). The HSC section 1569.686(b) requires that at the time that the Department is notified by the licensee of financial distress events, CDSS is required to initiate corrective action through compliance plans, noncompliance conferences or other action deemed appropriate by CDSS. It is incumbent upon CDSS to take such action in order to protect the health and welfare of the residents in care; allow for the opportunity to research alternative placement; and prepare residents for possible relocation. Should CDSS become aware of the occurrence of any of the specified events in HSC section 1569.686(a) without notification from the licensee within the timeframe specified, CDSS may take appropriate action against the licensee including the issuance of the civil penalty specified in HSC section 1569.686(c).

Final Modification:

Following the public hearing, CDSS is making a change to this regulation for clarity and consistency purposes.

This regulation has been renumbered from Section 87211(e) to 87211(h) to accommodate the addition of Sections 87211(d)(1)-(5), 87211(e), 87211(f), and 87211(g). The CDSS is amending the regulation language in Section 87211(h) to strike superfluous language referencing HSC section 1569.686(a) and adding the words "Section 87211(d)" to clarify the accurate regulatory cross reference.

Section 87211(f)

Specific Purpose/Factual Basis:

This amendment is for the purposes of clarity and consistency in the renumbering of Section 87211(d) to 87211(f).

Final Modification:

Following the public hearing, CDSS is making a change to this regulation for clarity and consistency purposes.

This regulation has been renumbered from Section 87211(f) to 87211(i) to accommodate the addition of Sections 87211(d)(1)-(5), 87211(e), 87211(f), and 87211(g).

Section 87211(g)

Specific Purpose/ Factual Basis:

This amendment is for the purposes of clarity and consistency in the renumbering of Section 87211(e) to 87211(g).

Final Modification:

Following the public hearing, CDSS is making a change to this regulation for clarity and consistency purposes.

This regulation has been renumbered from Section 87211(g) to 87211(j) to accommodate the addition of Sections 87211(d)(1)-(5), 87211(e), 87211(f), and 87211(g).

The following is the specific purpose and factual basis for new language added to 87211(g).

Specific Purpose:

This regulation is adopted for clarity, consistency, and ease of reference to make clear that the requirements in Subsection (d) cannot be waived, pursuant to Section 87209. Section 87211(d) is a statutory requirement directly referenced in regulation and as such, cannot be waived.

Factual Basis:

This regulation is being added to make clear that the requirements of Section 87211(d) are statutorily required pursuant to HSC section 1569.686 and cannot be waived, pursuant to Section 87209.

b) **Identification of Documents Upon Which Department Is Relying**

SB 897, Chapter 376, Statutes of 2011

Health and Safety Code section 1569.686

c) **Local Mandate Statement**

These regulations do not impose a mandate upon local agencies and school districts for certain costs mandated by the State. There are no reimbursable state-mandated costs under Section 17500 et seq., of the Government Code.

d) **Statement of Alternatives Considered**

In developing the regulatory action, CDSS did not consider any other alternatives than the one proposed because this was the most effective. No reasonable alternative has been presented for review.

The CDSS determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more

cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS has not received any facts, evidence, documents, testimony or other evidence to indicate there has been any significant, statewide adverse economic impact on business related to these laws. In addition, the proposed regulations are implementing state law. If there were to be any adverse economic impact on business, it would be a result of the passage of the enacting laws, not the regulations themselves. As such, CDSS determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Economic Impact Assessment

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Creation or Elimination of Jobs Within the State of California

The proposed regulation conforms to SB 897 (Chapter 376, Statutes of 2011). The proposed regulation is implementing state law. If there were to be any impact on the creation or elimination of jobs within the State of California, it would be a result of the passage of the enacting law, not the regulation. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California

The proposed regulation conforms to SB 897 (Chapter 376, Statutes of 2011). The proposed regulation is implementing state law. If there were to be any impact on the creation of new businesses or the elimination of existing businesses within the State of California, it would be a result of the passage of the enacting law, not the regulation. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of existing businesses within the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

The proposed regulation conforms to SB 897 (Chapter 376, Statutes of 2011). The proposed regulation is implementing state law. If there were to be any impact on the expansion of businesses currently doing business within the State of California, it would be a result of the passage of the enacting law, not the regulation. Therefore, the Department has determined that this regulatory proposal will not have an impact on the expansion of businesses currently doing business within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State's Environment

The benefits of the regulatory action to the health and welfare of California residents, worker safety and the state's environment are as follows: 1) enable the Department to address any quality of care issues that could arise in a Residential Care Facility for the Elderly (RCFE) experiencing financial distress; and 2) provide advance notice to the Department, residents and families of any financial distress events, thereby allowing for the opportunity to research alternative placement and prepare for possible relocation. This regulatory action provides protection to the health and safety of RCFE residents and prospective residents from any actions by RCFE licensees caused by financial distress.

The following documents were relied upon in proposing the regulatory action:

SB 897 (Chapter 376, Statutes of 2011) and HSC section 1569.686.

g) Benefits Anticipated from Regulatory Action

The proposed regulations will assist the Department in protecting resident health and safety by addressing any quality of care issues that could arise in an RCFE experiencing financial distress as exhibited by the occurrence of any of the specified events. These events could signify inadequate resources and/or appropriate staffing levels to provide care and supervision to residents. These regulations will benefit residents and their families by providing advance notice of any financial distress events, thereby allowing for the opportunity to research alternative placement and prepare residents for possible relocation. The promulgation of these regulations is necessary to carry out the Community Care Licensing Division's core function of protecting the health and safety of vulnerable elderly population in licensed residential care.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.

i) Testimony and Response

These regulations were considered as Item # 1 at the public hearing held on September 6, 2017, in Sacramento, California. Written and oral testimony was received from the following during the 45-day comment period from July 21, 2017 to 5:00 p.m. September 5, 2017.

Comments from the California Assisted Living Association (CALA)

1. Section 87211(d)(1)

Comment:

The CALA suggests correcting the factual basis for the regulatory change, as they believe that requiring the disclosure be made in writing is not an issue and is a

reasonable way to provide the notice. They would like to clarify that the statute does not require the disclosure be made in writing and is silent on how the notification should be made.

Response:

The CDSS appreciates this comment and agrees that the Statement of Reasons should be amended to make clear that the statute does not require the disclosure be made in writing and is silent on how the notification should be made. Therefore, the Statement of Reasons has been amended to clarify that the regulation seeks to provide clarification that notification to the potential resident or their representative shall be in writing and no later than prior to the resident or their representative signing the admission agreement.

Comments from LeadingAge, CA

1. ORD # 0217-07

Comment:

Jedd Hampton on behalf of Leading Age, CA provided oral testimony in support of this regulations package.

Response:

The CDSS appreciates the support of Leading Age, CA regarding this regulation package.

Comments from California Advocates For Nursing Home Reform (CANHR)

1. Section 87211(d)

Comment:

The CANHR recommends this section to be amended to specify the five financial distress events triggering the notification requirements of HSC section 1569.686(a).

Response:

The CDSS appreciates this comment and agrees that, for ease of the user, the statutory language should be incorporated in the regulation. The regulation has been amended to specify the five financial distress events.